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REPORT OF THE SECRETARY-GENERAL REGARDING PARAGRAPH 3 OF SECURITY COUNCIL RESOLUTION 687 (1991)

1. The present report is submitted pursuant to Security Council resolution 687 (1991) of 3 April 1991. In paragraph 3 of the resolution, the Security Council called upon me to lend assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate material, including the map transmitted by Security Council document S/22412, and to report back to the Security Council within one month.

2. In lending my assistance to Iraq and Kuwait with a view to making the arrangements to demarcate the boundary between them, I have borne in mind that, in paragraph 2 of Security Council resolution 687 (1991), the Council demanded "that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the 'Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the Restoration of Friendly Relations, Recognition and Related Matters', signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963 and registered with the United Nations and published by the United Nations in document 7063, United Nations, Treaty Series, 1964". I have also taken into account that, in a letter dated 4 April 1991 addressed to me by the Deputy Prime Minister and Minister for Foreign Affairs of Kuwait, Kuwait has expressed its intention to scrupulously comply with all the provisions of resolution 687 (1991) and to cooperate with me with a view to ensuring its implementation (S/22457, annex) and that, in accordance with paragraph 33 of Security Council resolution 687 (1991), the Minister for Foreign Affairs of Iraq in the penultimate paragraph of a letter dated 6 April 1991 (S/22456) has notified the Security Council and the Secretary-General of Iraq's acceptance of the provisions of that resolution. The text of the Agreed Minutes referred to in paragraph 2 of Security Council resolution 687 (1991) is contained in Security Council document S/22432.

3. After consultations with the Governments of Iraq and Kuwait, I will now establish an Iraq-Kuwait Boundary Demarcation Commission, to be composed of one representative each of Iraq and Kuwait and three independent experts who will be appointed by me, one of whom will serve as the Chairman. The Council will be informed as soon as the Commission is established. The terms of reference of the Commission will be to demarcate in geographical coordinates of latitude and longitude the international boundary set out in the Agreed

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Minutes between Kuwait and Iraq referred to above. In view of the fact that one of the main purposes of the demarcation of the boundary between Kuwait and Iraq is to promote stability and peace and security along the border, the Commission will also make arrangements for the physical representation of the boundary. The coordinates established by the Commission will constitute the final demarcation of the international boundary between Iraq and Kuwait in accordance with the Agreed Minutes of 4 October 1963. They will be lodged in the archives of both Governments and a certified copy will also be submitted to me, which I will communicate to the Security Council and will retain for safe-keeping in the archives of the United Nations.

4. The demarcation of the boundary between Iraq and Kuwait will be accomplished by drawing upon appropriate material, including the map transmitted by Security Council document S/22412, and by utilizing appropriate technology. The physical representation of the boundary will be carried out through the erection of an appropriate number and type of boundary pillars or monuments. The Commission will provide for arrangements for maintenance on a continuing basis and locational accuracy (including repositioning, if necessary) of the surficial boundary representation.

5. As soon as the Commission is constituted and after an initial assessment of the resources required for the demarcation of the boundary has been made, the Commission will transmit to me an estimate of costs, which I will communicate to the Security Council; simultaneously, I will make a proposal that all costs, including the initial costs of the Commission, should be shared between the two interested parties.

6. The Commission will be assisted by a small staff that will adopt its own rules of procedure and working methods and make the necessary arrangements for the identification and examination of appropriate material relevant to the demarcation of the boundary. The Commission will be responsible to me in the conduct of its work and will report regularly to me on the progress of its work with a view to the earliest possible finalization of the demarcation of the boundary. The Commission will take its decisions by majority. Its decisions regarding the demarcation of the boundary will be final.

7. The Commission shall enjoy unimpeded freedom of movement in the area of the demarcation of the international boundary as well as all necessary privileges and immunities for the fulfilment of its task. The three independent experts shall enjoy the status of experts on missions within the meaning of article VI of the Convention on Privileges and Immunities of the United Nations of 1946. 1/

8. In the exercise of its task of demarcating the boundary, with respect to physical security and clearance of mines the Commission will rely on the relevant arrangements made for the United Nations Iraq-Kuwait Observer Mission (UNIKOM).

Notes

1/ General Assembly resolution 22 A (I).

Annex I

Letter dated 19 April 1991 from the Permanent Representative of Kuwait to the United Nations addressed to the Secretary-General

I should like to refer to the report regarding paragraph 3 of Security Council resolution 687 (1991) and to convey the acceptance by the Government of Kuwait of the terms set out in the report and its readiness to cooperate with the United Nations in implementing those terms.

(Signed) Mohammad A. ABULHASAN
Ambassador
Permanent Representative

Annex II

Letter dated 23 April 1991 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

[Original: Arabic]

On instructions from my Government and with reference to the meeting that we held with the Legal Counsel of the United Nations, Mr. Fleischhauer, on 17 April 1991, I have the honour to transmit herewith a letter addressed to you by Mr. Ahmed Hussein, Minister for Foreign Affairs of the Republic of Iraq, dated 23 April 1991 concerning the Iraq-Kuwait Boundary Demarcation Commission.

(Signed) Abdul Amir A. AL-ANBARI
Ambassador
Permanent Representative

Enclosure

Letter dated 23 April 1991 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General

[Original: Arabic]

With reference to the meeting held between our Permanent Representative and the Legal Counsel of the United Nations on 17 April 1991 and your draft report which you intend to submit to the Security Council concerning paragraph 3 of Security Council resolution 687 (1991) and regarding which you asked for the view of my Government, I have the honour to state the following.

Part I of the letter that I addressed to you on 6 April 1991 explained that, although in its preamble Security Council resolution 687 (1991) affirms that Iraq is an independent sovereign State, many of its iniquitous provisions do not respect this sovereignty but constitute an unprecedented assault on it and on the rights that stem therefrom, embodied in the Charter and in international law and custom. With regard to the question of the boundary, the Security Council has imposed a specific position with regard to the Iraqi-Kuwaiti boundary, whereas the custom in law and in practice in international relations is that boundary questions are left to an agreement between States, because this is the sole basis that can guarantee the principle of the stability of boundaries.

Furthermore, the Council resolution does not take into account the viewpoint of Iraq, namely, that the "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the Restoration of Friendly Relations, Recognition and Related Matters" of 4 October 1963 have not yet been subjected to the constitutional procedures required for their ratification by the legislative authority and the President of Iraq, thus leaving the question of the boundary pending and unresolved. The Council has nevertheless imposed on Iraq the line of its boundary with Kuwait. By acting in this strange manner, the Council itself has also violated one of the provisions of resolution 660 (1990), which was the basis for the subsequent resolution adopted by the Council. In its paragraph 3, resolution 660 (1990) called upon Iraq and Kuwait to resolve their differences through negotiations, and the question of the boundary is well known to be one of the main differences. Iraq officially informed the Council that it accepted resolution 660 (1990) and was prepared to implement it, but the Council has disregarded this legal position, contradicting its previous resolutions, and adopted an iniquitous resolution that imposes new conditions on Iraq. It has imposed a border situation on Iraq, an independent sovereign State and Member of the United Nations, and has deprived it of its right to establish its territorial rights in accordance with the principles of international law. Thus the Council would also deprive Iraq of the right to exercise its free choice and to affirm that it accepts that boundary without reservation. Where the question of the boundary is concerned, the Council resolution is an iniquitous resolution, which constitutes a dangerous precedent, a first in the annals of

the international Organization and - as some impartial members of the Council indicated in their statements when the resolution was voted on - an assault on the sovereignty of States.

The Iraqi Government remains convinced of the legitimate character of the position reflected in the above observations. This legitimate character is especially borne out by the mission entrusted to you by virtue of paragraph 3 of resolution 687 (1991). The above-mentioned paragraph calls upon you to lend your assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate material, including the map transmitted by Security Council document S/22412.

Accordingly, my Government wishes to make the comments set forth below concerning your draft report to which I referred above.

1. My Government wonders on what legal foundation the Council based its resolution 687 (1991) and you your draft report in considering the map that was transmitted by Security Council document S/22412, dated 28 March 1991, at the request of the Permanent Mission of the United Kingdom and which your Legal Counsel described to our Permanent Representative as a United Kingdom map mentioned in the Agreed Minutes of 1963. The Agreed Minutes did not refer to any map, as is clear from the text published in the United Nations Treaty Series, vol. 485, No. 7063. It is blatantly true also that the sole mention of the map in question in paragraph 3 of Council resolution 687 (1991) was introduced without any legal grounds.

The Government of my country was not a party to the drawing of that map. It did not recognize the map, nor is there any proof of its having extended such recognition. Accordingly, the fact that you and the Council consider the map to be a part of the material to be drawn upon for the demarcation process constitutes an iniquitous and unilateral imposition against the will of Iraq, a sovereign State Member of the United Nations, and a prejudgement of the course of the land boundary before any commission embarks on the process of demarcating that boundary.

2. In addition, the assistance that you have offered in making arrangements for the demarcation of the boundary between Iraq and Kuwait must ensure a perfect balance between the positions that either side may adopt with regard to the demarcation process, together with a just and equitable approach to the settlement of any differences that might arise between them concerning technical matters. The Iraqi Government therefore believes that, if the Commission entrusted with the demarcation process is constituted in accordance with your proposal, the result cannot be just and equitable, particularly in view of our comments in paragraph 1 above. You have suggested that the Commission consist of five members, of whom two would represent Iraq and Kuwait respectively, together with three independent experts to be chosen by you, one of whom would be appointed as the Chairman. You have also suggested that the Commission's decisions should be taken by a majority vote. Although it has no doubts as to your credibility with respect to the selection of the three independent experts, my country's Government nevertheless believes that,

since it will play no part in the selection of the three experts, it will have no way of ensuring in advance that they are truly independent. Its views with regard to the demarcation process will thus be represented only by one of the five members.

3. You mention in the draft report that the demarcation of the boundary will be accomplished by drawing upon appropriate material, including the map transmitted by Security Council document S/22412, as referred to in paragraph 3 of resolution 687 (1991). However, you add that the Commission may "utilize appropriate technology" (para. 4 of the draft report) and that it will "make the necessary arrangements for the identification and examination of appropriate material relevant to the demarcation of the boundary" (para. 6 of the draft report). The Government of Iraq believes that the terms "appropriate material", "appropriate technology" and "identification and examination of appropriate material relevant to the demarcation of the boundary" must be explained. This explanation will permit my Government to express its views, if such views are welcome, on a solid basis. The requested explanation will also help to reduce the possibilities of disagreement in the future when the Commission begins its work.

4. You propose in paragraph 5 of the draft report that the costs of the demarcation process should be shared between the two parties. The Government of Iraq fails to understand the basis for this proposal, since the overall thrust of the proposals contained in the draft report amounts - in the opinion of my Government - to a virtual "act of capitulation" in which Iraq is denied any freedom to join in the harmonious agreement on its contents. Accordingly, and in the light of my comments at the beginning of this letter, the suggestion seems to be that Iraq should bear half the costs of the demarcation process without any account being taken of its views on the boundary question as a whole, with respect to either demarcation or delimitation. The Iraqi Government cannot therefore see any justification, based on principles of justice or equity, for bearing any costs relating to a process which is imposed upon it.

I should like, in conclusion, to assure you that the Iraqi Government is fully prepared to consult with you concerning the comments contained in this letter, either in New York or elsewhere. In this connection, I also wish to note that, just as we accepted resolution 687 (1991) despite our objections to and criticism of its provisions, we will cooperate with you and will nominate a representative of our Government to participate in the Demarcation Commission, even if you take no account of the views and comments we have expressed above. We do this because the circumstances forcing our acceptance persist.

(Signed) Ahmed HUSSEIN
Minister for Foreign Affairs
Baghdad, 23 April 1991

Annex III

Letter dated 30 April 1991 from the Secretary-General addressed to the Minister for Foreign Affairs of Iraq

I have the honour to refer to your letter dated 23 April 1991, which was transmitted to me by a letter of the same date from the Permanent Representative of Iraq to the United Nations and which contained comments on the proposals made with regard to the implementation of paragraph 3 of Security Council resolution 687 (1991) and on which I must report to the Security Council no later than 2 May 1991. In informing me of your Government's readiness to cooperate with me and to nominate a representative of Iraq to participate in the proposed Boundary Demarcation Commission, a decision which I welcome, the letter nevertheless contains a number of comments to which I would like to respond.

The first comment of your Government is that, in international law, a boundary demarcation between two States can be carried out only by agreement between the parties and that the Security Council has no competence to impose such a demarcation. In this connection, I would like to recall that, in paragraph 2 of resolution 687 (1991) the Security Council, acting under Chapter VII of the Charter of the United Nations demanded that Iraq and Kuwait respect the inviolability of their international boundary and the allocation of islands "set out in the 'Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the Restoration of Friendly Relations, Recognition and Related Matters', signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963". In paragraph 3 of that resolution the Council called upon me to lend my "assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait". In identical letters dated 6 April 1991 addressed to me and to the President of the Security Council (S/22456), your Government formally notified its acceptance of the provisions of that resolution. You further reconfirmed your Government's acceptance of paragraph 3 of resolution 687 (1991) at the end of your letter of 23 April 1991 (see annex II, enclosure). Therefore, the element of agreement as far as Iraq is concerned, is provided by your Government's official notifications of acceptance. Since the Government of Kuwait has also expressed to me its willingness scrupulously to comply with all provisions of the resolution and to cooperate with me to ensure its implementation (S/22457), the necessary element of consent has been provided by the two parties.

Secondly, your Government states that the proposed demarcation would be prejudged by a specific reference to a map made available by the United Kingdom and which, according to the letter, the Legal Counsel described as "a United Kingdom map mentioned in the agreed minutes of 1963". On a purely factual point, I wish to state that the Legal Counsel of the United Nations did not describe the map as having been mentioned in the 1963 agreed minutes. In response to a question as to which map was referred to in document S/22412, your Permanent Representative was informed that the map in question was "a

United Kingdom map". On a substantive level, however, I am obliged to point out that the resolution provides that the demarcation of the boundary should be based on "appropriate material, including the map transmitted by Security Council document S/22412" [emphasis added]. In the light of this wording, I have proposed that the Commission will have to make "necessary arrangements for the identification and examination of appropriate material relevant to the demarcation of the boundary".

Thirdly, your Government queries the independence of the experts to be appointed by me to serve on the Boundary Commission and comments on the proposed decision-making by majority. I would like to assure you that, in appointing the independent experts of the Commission, I shall, as always, base my decisions on the need to ensure independence, competence and integrity. Furthermore, to ensure an equitable approach and the effective functioning of the Commission, I have proposed that neither Government should be able to frustrate the work of the Commission.

Fourthly, your Government has requested me to explain such terms as "appropriate material", "appropriate technology" and "identification and examination of appropriate material relevant to the demarcation of the boundary". It is up to the Commission to examine and identify the relevant documentation and to determine which technology or combination of methods can best be used for the fulfilment of its mandate. In my view it would prejudice the work of the Commission, and even hinder its independence, if at this stage I were to go beyond the level of detail concerning the working methods of the Boundary Commission set out in my draft report.

Finally, your Government objects to paying half of the costs of the demarcation on the ground that its views on the boundary question are not fully being taken into account. However, through your Government's participation in the work of the Boundary Commission its views will find such expression. Together with your Government's acceptance of paragraph 3 of resolution 687 (1991), both in its letter of 6 April 1991 (S/22456) as well as in the letter of 23 April 1991, I can see no basis for objections to the paying of its share of the costs, which will be determined by the Commission.

In the light of your Government's expressed readiness to cooperate with me, I intend to proceed immediately with the establishment of the Commission and will accordingly convey my proposals, together with this exchange of correspondence, to the Security Council.

(Signed) Javier PEREZ DE CUELLAR
Secretary-General